

A preliminary hearing order is subject to review by the Appeals Board when the issues of timely notice and timely written claim are raised. See K.S.A. 44-534a(a)(2).

Before the issues of timely notice and timely written claim can be addressed in this case, the date of claimant's alleged accident has to be established. At the time claimant filed his Application for Preliminary Hearing, (Form E-3), he noted a date of accident of March 8, 1993, and each and every day thereafter. At the Preliminary Hearing, claimant again asserted that the date of accident was March 8, 1993 and each and every day thereafter. However, claimant's attorney, in his preliminary remarks at the Preliminary Hearing, stated his main "thrust" would be that the accident occurred on March 8, 1993. Finally, during direct examination of the claimant, and after reviewing the medical reports, claimant's attorney changed the date of claimant's accident to February 8, 1993. The preliminary hearing record does not contain an objection from the respondent in reference to this accident date change. Accordingly, the Appeals Board finds for preliminary hearing purposes that the alleged date of claimant's accident is February 8, 1993.

The respondent, however, in its argument contained in its memorandum letter filed before the Appeals Board in support of its appeal, alleges the date of accident is March 8, 1993, and each and every day thereafter. The respondent argues the date of accident should therefore be August 27, 1993, as that was the date the claimant testified was his last day worked. Respondent contends that since the date of accident is August 27, 1993, then this case should be decided within the coverage of the Workers Compensation Laws as amended on July 1, 1993. The present notice statute, K.S.A. 44-520, requires notice of an accident within ten (10) days or a showing of just cause for failing to do so within seventy-five (75) days. Respondent contends the claimant failed to establish either notice within the ten (10) day period or just cause to extend the notice period to seventy-five (75) days. Additionally, respondent argues that written claim for compensation was not served on the respondent until August 30, 1994, more than one year from claimant's last day worked of August 27, 1993. Since the respondent had no actual knowledge of the accident until August 30, 1994, the claimant was required to serve on the respondent a written claim within two-hundred days of the alleged date of accident of August 27, 1993, and therefore, the August 30, 1994 written claim was not timely. See K.S.A. 1992 Supp. 44-520a(a).

The claimant has established by his uncontradicted testimony that he first served a written claim for compensation on the respondent on June 30, 1993. This is within two-hundred (200) days from his date of accident of February 8, 1993, and is, therefore, timely. See K.S.A. 1992 Supp. 44-520a(a). Since February 8, 1993, is found to be the date of claimant's accident, the workers compensation law in effect on that date governs notice. The pre-July 1, 1993 statute, K.S.A. 1992 Supp. 44-520, required notice to be given within ten (10) days of the accident, but an action for compensation was not barred if the notice was not given within ten (10) days, unless respondent proved it was prejudiced thereby. In this case, the respondent has presented no evidence to prove such prejudice, so the written claim served by the claimant also constitutes notice of the claimant's accident as required by K.S.A. 1992 Supp. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order entered by Administrative Law Judge John D. Clark, dated October 25, 1994, should be and the same is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 1994.

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BOARD MEMBER

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c: Steven L. Foulston, Attorney at Law, Wichita, KS 67201  
Richard A. Boeckman, Attorney at Law, Great Bend, KS 67530  
John D. Clark, Administrative Law Judge  
George Gomez, Director